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June 15, 1999

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VIA HAND DELIVERY

Mr. Sherille Ismail
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RECEIVED

JUN 15 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation -- IB Docket No. 98-212

Dear Mr. Ismail:

On behalf of Equant Network Services ("Equant"), we are writing to explain further Equant's position that the Commission should prohibit AT&T and any AT&T/BT subsidiaries from entering into any exclusive marketing or transit arrangements with dominant foreign carriers.¹

Exclusive Marketing Arrangements. The Commission has long recognized that exclusive marketing arrangements with dominant foreign carriers pose a serious risk of harm to competition.² For this reason, the Commission has included a "no exclusive arrangements" provision in certain authorizations issued to providers of international telecommunications services. For example, cable landing licenses -- including licenses currently held by AT&T -- state that a carrier licensee "shall not acquire or enjoy any right for the purpose of handling or interchanging traffic . . . that is denied to any other carrier."³ The Commission has expressly

¹ See *Reply Comments of Equant Network Services*, IB Docket No. 98-212, at 11, 12 (filed Feb. 17, 1999).

² *Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd 3873, 3970 (1995) ("Market Entry Order").

³ See, e.g., *AT&T Corp., et al.*, 13 FCC Rcd 22540, 22546 (1998).

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determined that this prohibition applies to exclusive marketing arrangements with foreign carriers.⁴ Moreover, in authorizing international ventures involving Sprint and MCI, the Commission stated that these U.S. carriers could not enter into any exclusive marketing arrangements.⁵

While the Commission has declined to include an explicit ban on exclusive marketing arrangements in its regulatory framework for the participation of dominant foreign carriers in the U.S. telecommunications market, Equant believes that the specific circumstances surrounding the AT&T/BT merger warrant the imposition of a condition prohibiting these carriers (and their subsidiaries) from concluding such arrangements. After the merger, AT&T and BT will occupy a dominant position in the global market for seamless services. Incumbent foreign carriers seeking to enter the global market will naturally seek to partner with this alliance. If AT&T/BT are permitted to conclude exclusive marketing arrangements with dominant foreign carriers, competing providers of global services will be placed at a serious disadvantage. Notwithstanding the WTO Basic Telecom Agreement, meaningful competition has not taken root in most markets and many recently privatized carriers still enjoy privileged operating rights. Consequently, incumbent foreign carriers often provide the only effective means of marketing global services. To the extent that AT&T/BT are able to "lock up" these incumbents through exclusive marketing agreements, competing providers of global services could be required to establish and maintain separate sales forces in multiple foreign countries just to market their services. Such conditions would severely prejudice the development of competition in the global market for seamless services and, in those jurisdictions where monopoly conditions still exist, would preclude competition altogether.

Exclusive Transit Arrangements. As indicated in its reply comments, Equant also believes that the Commission should prohibit AT&T/BT from entering into exclusive transiting arrangements that are not made available to other U.S. providers. As the Commission has recognized, carriers are adopting non-traditional, more cost effective means of routing international traffic.⁶ Calls that originate or terminate in the United States are increasingly being

⁴ See *Market Entry Order*, 11 FCC Rcd at 3970; *U.S. Sprint Communications Company Limited Partnership*, 4 FCC Rcd 6279, 6284 (1989) (explaining that "exclusive arrangements with correspondents have long been held contrary to Commission policy.").

⁵ See *Sprint Corporation*, 11 FCC Rcd 1850, 1870 (1996); *MCI Communications Corporation, British Telecommunications plc*, 9 FCC Rcd 3960, 3967 (1994); see also *Motion of AT&T to be Declared Non-Dominant for International Service*, 11 FCC Rcd 17963, 17990-91 (1996) (explaining that the use of non-exclusive marketing arrangements by Wordpartners and Uniworld reduced the competitive concerns posed by these alliances).

⁶ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23895 (1997).

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switched through an intermediate third country. Transit arrangements can provide new and emerging providers of global seamless services with the same efficiencies that they have long provided to carriers in the IMTS market. Plainly, the Commission should not permit AT&T and BT to preclude competitors from realizing these efficiencies by locking dominant foreign carriers into exclusive arrangements.

The Commission's No Special Concessions Rule prohibits U.S. carriers from entering into exclusive "operating agreements" and "distribution arrangements" with dominant foreign carriers.⁷ Transit traffic that originates or terminates in the United States has long been treated for certain regulatory purposes in the same manner as direct, bilateral traffic.⁸ Transit agreements are thus just another form of international operating agreement. The Commission, therefore, should clarify that the no special concessions requirement prohibits AT&T and the AT&T/BT subsidiaries from entering into any exclusive operating agreements with dominant foreign carriers for transit traffic.

Please contact the undersigned with any questions.

Sincerely,

David A. Nall

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Brian J. McHugh

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⁷ *Id.* at 23963.

⁸ See *Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes*, 2 FCC Rcd 1118 (1987).